

Appl. No. 10/608,357
Amdt. B dated June 6, 2007
Reply to O.A. of May 2, 2007

PATENT
Docket No. J-3866

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REMARKS/ARGUMENTS

I. Status and Introductory Remarks

Claims 1-48 are pending and at issue in the present application.

Claims 1-48 stand rejected as anticipated by Collingwood (US 5662835).

As an initial matter, the undersigned thanks Examiner Chorbaji for the courtesies extended during telephonic interviews between the examiner and the undersigned on May 22, 2007 and June 5, 2007. The issue of whether certain recitations regarding the volatile liquids and wicks in the claims are functional or non-functional recitations -- as explained in the pending final Office action -- and whether such recitations should have been accorded patentable weight during examination were discussed. Agreement was reached that if the preambles of the claims at issue are amended to recite a "product" or "an article of manufacture," that the recitations relating to the characteristics of the volatile liquid and the wick would then be given patentable weight and fully considered during examination.

II. Traversals of Rejections

Applicants traverse the rejection of claims 1-48 as anticipated by Collingwood.

The Office actions indicate that several recited features of the claims at issue have not been given patentable weight during examination because, it is alleged, the limitations directed toward the characteristics of the volatile active are merely recitations of intended use. The undersigned continues to traverse this allegation for the same reasons already presented in Amendment A, and additionally because the volatile liquid has been positively recited in all of the claims at issue. There is no suggestion that the recited volatile liquids are simply one possible use. Rather, the language of the claims is clear that the volatile liquid is part of the recited apparatus (whether a dispenser or a refill). Further, the recitation that the volatile liquid is "capable of evaporating through the wick" within a defined time period and under defined conditions is not merely an intended use, but rather is a positively recited and readily identifiable characteristic of the wick given the recited characteristics of the volatile liquid. The same argument applies to the recited mean pore size of the wicks in dependent claims 12, 24, 36, and 48, which are not an intended use, but rather a defining feature of the claimed apparatus.

However, in an attempt to obtain speedy consideration of all of the recited features in the claims at issue, all of the claims have been amended only to change the preamble to recite "an article of manufacture" in lieu of either the term "dispenser" or "refill," as agreed with the

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examiner. Because an "article of manufacture" is a statutory category, and because dispensers, refills, volatile liquids (and the remaining recited features) are all articles that would be manufactured, no new matter has been added by these amendments, and all of the recitations in the bodies of the claims should be considered during examination. Further, because the recitations in the bodies of the claims have not been amended, the scopes of the claims have not been altered beyond a mere change in terminology.

As amended, claim 1, and claims 2-12 dependent thereon, recite an article of manufacture comprising a housing, a fan mounted to the housing to generate an air stream, between about 10 ml and about 15 ml of a volatile liquid carried within an enclosed reservoir, and a wick extending between the volatile liquid and the air stream. The volatile liquid has an evaporation rate between about 5.0×10^{-9} to about 10.0×10^{-8} meters per second measured with about 30% of the volatile liquid remaining at room temperature, as measured and calculated by drop shape analysis. About 90% of the volatile liquid is capable of evaporating through the wick between within one and two months under ambient conditions when the wick is exposed to the surrounding environment.

Claim 13, and claims 14-24 dependent thereon, recite an article of manufacture comprising a housing, a porous wick associated with the housing, and a preselected volume of volatile liquid enclosed within a reservoir. The volatile liquid has an evaporation rate between about 5.0×10^{-9} to about 10.0×10^{-8} meters per second measured with about 30% of the volatile liquid remaining at room temperature, as measured and calculated by drop shape analysis. The wick is in fluid communication with the volatile liquid and the surrounding environment. At least 90% of the volatile liquid evaporates within 2 months under ambient conditions when the wick is exposed to the surrounding environment.

Claim 25, and claims 26-36 dependent thereon, recite an article of manufacture in combination with a dispenser comprising a container comprising an aperture, a preselected amount of volatile liquid carried within the container, and an ultra high molecular weight high density polyethylene wick disposed in the aperture so as to minimize spillage of the volatile liquid from within the container. The wick is in fluid communication with the volatile liquid and the surrounding environment. The volatile liquid has an evaporation rate between about 5.0×10^{-9} to about 10.0×10^{-8} meters per second measured with about 30% of the volatile liquid remaining at room temperature, as measured and calculated by drop shape analysis. The

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container is insertable into the dispenser including a housing and a fan mounted to the housing to generate an air stream. About 90% of the volatile liquid evaporates to the surrounding environment through the wick within two months under ambient conditions.

Claim 37, and claims 38-48 dependent thereon, recite an article of manufacture in combination with a dispenser comprising a container and a volatile liquid carried by the container. The volatile liquid has an evaporation rate between about 5.0×10^{-9} to about 10.0×10^{-8} meters per second measured with about 30% of the volatile liquid remaining at room temperature, as measured and calculated by drop shape analysis. The container is insertable into the dispenser, and the dispenser includes a housing and a porous wick associated with the housing.

Further, dependent claims 3, 15, 27, and 39 recite that the volatile liquid of the respective independent claims has a relative evaporation rate between about 0.50 and 4.0.

As disclosed in the specification:

The relative evaporation rate is defined as the evaporation rate of the volatile liquid divided by the evaporation rate of dodecane, measured under identical conditions. (Page 6, lines 21-23).

The applied reference does not disclose or suggest a volatile liquid that has an evaporation rate between about 5.0×10^{-9} to about 10.0×10^{-8} meters per second measured with about 30% of the volatile liquid remaining at room temperature, as measured and calculated by drop shape analysis, as recited in all the claims at issue.

In addition, the applied reference does not disclose or suggest an article of manufacture, as recited in claims 1-12, wherein about 90% of the volatile liquid is capable of evaporating through the wick between within one and two months under ambient conditions when the wick is exposed to the surrounding environment. Further, the applied reference does not disclose or suggest an article of manufacture, as recited in claims 13-24, wherein at least 90% of the volatile liquid evaporates within 2 months under ambient conditions when the wick is exposed to the surrounding environment. Yet further, the applied reference does not disclose or suggest an article of manufacture in combination with a dispenser, as recited in claims 25-36, wherein about 90% of the volatile liquid evaporates to the surrounding environment through the wick within about two months under ambient conditions.

Further still, the applied reference does not disclose or suggest the articles of manufacture

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or combinations as recited in claims 3, 15, 27, and 39, including a volatile liquid having a relative evaporation rate between about 0.50 and 4.0.

Even further, the applied art does not disclose or suggest a wick having a mean pore size between about 1 and about 10 microns as recited in claims 12, 24, 36, and 48.

In fact, Collingwood discloses an apparatus for emanating a chemical agent described only as "a fragrance or insecticide" (column 1, line 6). Collingwood does not disclose or suggest any specific information regarding an evaporation rate of the chemical agent or any information regarding a pore size of the wick.

In order to anticipate a claimed invention, a single reference must actually disclose each and every claim limitation either expressly or inherently. The mere fact that a reference may be capable of having claimed characteristic is not legally sufficient to anticipate a claimed invention as reasoned at page 3 in the pending Office action. Rather, the reference must actually disclose the property itself. See MPEP § 2131.

In addition, based on the citation to MPEP § 2112.01 at page 2 of the Office action, the examiner is apparently also suggesting – albeit unclearly and without any explanation or support – that the features of the recited liquids and wicks might be somehow inherent in the applied reference. This suggestion is without support, and the undersigned continues to traverse such suggestion for the reasons and arguments already presented in Amendment A, filed January 17, 2007, namely that the recited features of the volatile liquids are not necessarily present in all volatile liquids. If the examiner was not intending to advance any such arguments, the undersigned requests a clarification of the pertinence of the reference to MPEP § 2112.01 at page 2 of the pending Office action.

III. Conclusion and Request for Reconsideration

For the foregoing reasons, applicants request reconsideration and withdrawal of the pending rejections and allowance of the claims at issue, notice of which is respectfully requested.

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IV. Deposit Account Authorization

The Commissioner is hereby authorized to charge any deficiency in any amount enclosed or any additional fees which may be required during the pendency of this application under 37 CFR 1.16 or 1.17, except issue fees, to Deposit Account No. 50-1903.

Respectfully submitted,

McCracken & Frank LLP

June 6, 2007

By: TPR, Jr.

Thomas P. Riley
Reg. No. 50,556

200 W. Adams
Suite 2150
Chicago, Illinois 60606
Tel. (312) 263-4700
Fax (312) 263-3990